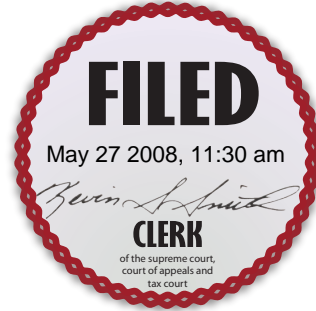


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JOHN JORDAN II,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0711-CR-957

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
The Honorable Mark Jones, Judge Pro Tempore
Cause No. 49G05-0608-FB-155836

May 27, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Following a jury trial, Appellant-Defendant John Jordan II was convicted of Battery Resulting in Serious Bodily Injury as a Class C felony¹ and sentenced to four years suspended to probation. Upon appeal, Jordan challenges the sufficiency of the evidence to negate his claim of self-defense. Jordan further claims that his sentence is inappropriate in light of the nature of the offense and his character. We affirm.

FACTS AND PROCEDURAL HISTORY

On the night of August 20, 2006, Eric Dodson, Joseph Sizemore, and Brian Woods left The Ugly Monkey, a bar in downtown Indianapolis, and encountered their acquaintance, Mike Shea, and Jordan. Shea was Jordan's sister's boyfriend. Sizemore believed Jordan was "pick[ing] on" Shea, which caused a confrontation between Jordan and Dodson's group. Tr. p. 52. Jordan pushed Dodson down, so Sizemore "snatched" Jordan. Tr. p. 53. A security guard from the nearby Slippery Noodle bar broke up this confrontation. Dodson, Sizemore, and Woods walked across the street to a parking lot. Minutes later, Jordan and at least one other person came toward Dodson's group. A scuffle ensued. At some point Sizemore saw Dodson on the ground, not moving, with Jordan beating him. Jordan's sister and another individual tried to pull Jordan away, but Jordan broke free from them and resumed beating Dodson. The parking lot security guard subsequently arrived on the scene, which caused Jordan to run off. Indianapolis Metropolitan Police Officer Eric Hench subsequently chased after and apprehended Jordan.

¹ Ind. Code § 35-42-2-1 (2006).

Indianapolis Metropolitan Police Officer Laura Smith, who arrived on the scene, found Dodson with cuts, bruises, and swelling around his face. Dodson's injuries included a broken nose and shattered orbital. Officer Smith arrested Jordan. According to Officer Smith, Jordan smelled of alcohol and was "kinda giggling." Tr. p. 45.

Dodson ultimately underwent surgery to replace his orbital with a plastic plate to support his eye. Dodson's injuries caused him "excruciating" pain at the time of his injury.² Tr. p. 104.

Jordan's version of the events on the night in question was that Dodson's group had initially surrounded him, with Dodson yelling in his face and spitting at him, causing Jordan to shove Dodson. After a security guard separated them, Dodson and his group walked across the street, calling Jordan profane names. Dodson then took his shirt off. Approximately ten to fifteen minutes later, Jordan walked across the street to meet his friend, Jason Neu, whom he had called to escort him away from the scene. At that point Dodson's group surrounded him. Jordan was hit from behind, and Dodson swung at him, causing them to fall to the ground and fight. Shortly thereafter, with the assistance of Neu, Jordan got up and ran away before being apprehended by authorities.

On August 24, 2006, Jordan was charged with Class B felony aggravated battery. Following a July 12, 2007 jury trial, Jordan was convicted of the lesser-included offense of Class C felony battery. During his September 13, 2007 sentencing hearing, the trial

² By the time of trial, Dodson testified that his vision had been fully restored, but that his eye hurt from time to time and was a little smaller than it had been.

court sentenced Jordan to four years, all of it suspended to probation. This appeal follows.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Jordan first argues that there was insufficient evidence to sustain his conviction because the State failed to disprove his claim of self-defense. The standard of review for a challenge to the sufficiency of the evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. *Randolph v. State*, 755 N.E.2d 572, 576 (Ind. 2001). We neither reweigh the evidence nor judge the credibility of witnesses. *Id.* If there is sufficient evidence of probative value to support the conclusion of the trier of fact, then the verdict will not be disturbed. *Id.*

A valid claim of self-defense is legal justification for an otherwise criminal act. *Id.* at 575; *See* Ind. Code § 35-41-3-2 (2006). When a defendant raises the claim of self-defense, he is required to show that (1) he acted without fault; (2) he was in a place where he had a right to be; and (3) he had a reasonable fear or apprehension of bodily harm. *Henson v. State*, 786 N.E.2d 274, 277-78 (Ind. 2003). Once a defendant claims self-defense, the State bears the burden of disproving at least one of these elements beyond a reasonable doubt for the defendant's claim to fail. *Miller v. State*, 720 N.E.2d 696, 700 (Ind. 1999). The State may meet this burden by rebutting the defense directly, by affirmatively showing the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief. *Id.* Whether the State has met its burden is a question of fact for the jury. *Id.*

In arguing that the State failed to disprove his claim of self-defense, Jordan claims that he merely acted to protect himself from Dodson's threatened force. Jordan points out that Dodson, who was unable to remember the incident, offered no explanation for his behavior, and that no witness was able to contradict Jordan's version of the exact circumstances under which he began to fight Dodson.

Regardless of the exact events immediately leading to Jordan's and Dodson's ultimate confrontation, the record supports the conclusion that Jordan, who reapproached Dodson and his group by crossing the street in their direction following the initial confrontation, was the initial aggressor or at least willingly participated in the violence. As the jury was instructed, self-defense is unavailable to a defendant who is the initial aggressor or participates willingly in the violence. *See Henson*, 786 N.E.2d at 277; *see also* Ind. Code § 35-41-3-2 (e). Jordan does not dispute that, after a security guard broke up his first confrontation with Dodson's group, he walked across the street in the group's direction approximately ten to fifteen minutes later. The jury was within its fact-finding capacity to conclude that Jordan's act of crossing the street toward the group was a demonstration of his aggression and/or willingness to fight rather than a benign attempt to leave the scene. We therefore conclude that the State presented sufficient evidence to disprove Jordan's claim of self-defense.

II. Appropriateness of Sentence

Jordan also challenges his four-year suspended sentence by arguing that it is inappropriate in light of the nature of his offense and his character. Article VII, Sections 4 and 6 of the Indiana Constitution “authorize[] independent appellate review and

revision of a sentence imposed by the trial court.”” *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006) (emphasis and internal quotations omitted)). Such appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that the “Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” We exercise deference to a trial court’s sentencing decision, both because Rule 7(B) requires that we give “due consideration” to that decision and because we recognize the unique perspective a trial court has when making sentencing decisions. *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). It is the defendant’s burden to demonstrate that his sentence is inappropriate. *Childress*, 848 N.E.2d at 1080.

With respect to the nature of the instant offense, Jordan points to Dodson’s drunken and aggressive behavior in arguing that his four-year sentence is excessive. Whether or not Dodson’s behavior was beyond reproach, Jordan’s actions at issue involve repeatedly beating a highly intoxicated and ultimately unresponsive man in the face and head, resulting in multiple facial injuries including a broken nose and shattered orbital requiring replacement surgery.

With respect to Jordan’s character, we commend Jordan for his successful efforts to educate and employ himself, and we acknowledge his fine family support. Given the seriousness of the instant crime, however, we cannot say that Jordan’s advisory four-year sentence, all of which was suspended, is inappropriate.

The judgment of the trial court is affirmed.

BARNES, J., and CRONE, J., concur.